Filed 6/27/19 P. v. Hollis CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MARVIN GLENN HOLLIS, Defendant and Appellant.	B292490 (Los Angeles County Super. Ct. No. SA030436)

APPEAL from an order of the Superior Court of Los Angeles County, Harry Jay Ford III, Judge. Dismissed.

Maggie Shrout, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Marvin Glenn Hollis purports to appeal from an order denying a Proposition 47 petition for resentencing. (Pen. Code, § 1170.18, subd. (a).)[1] Hollis, who filed his notice of appeal in pro. per., has conflated two superior court cases. His notice states he appeals from an "August 15, 2018 order denying [his] Proposition 47 petition." The trial court issued that order in his robbery case, Superior Court case No. SA010159. However, he makes no claim of error concerning that case.

The notice states that Hollis filed it in Superior Court "case No. SA030436," in which a jury convicted him of multiple offenses, including receiving stolen property (count 4). His claim pertains to alleged resentencing error after a trial court partially granted his Proposition 47 petition in that case. He claims the court erred in failing to consider his entire sentence when resentencing him on count 4. He made that same claim in a petition for a writ of habeas corpus filed in that case.

To the extent this appeal is based on the order denying the Proposition 47 petition in Superior Court case No. SA010159, we dismiss the appeal; Hollis has abandoned it by failing to raise a claim of error. To the extent this appeal is based on his claim concerning Superior Court case No. SA030436, we dismiss the appeal, because it was taken from a nonappealable order.

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[1] Unless otherwise indicated, subsequent section references are to the Penal Code.

BACKGROUND

I. Superior Court Case No. SA010159 (the Robbery Case)

On March 23, 1992, Hollis committed second degree robbery. On September 3, 1992, the jury convicted him of that charge. He admitted he had suffered a prior serious felony conviction (§ 667, subd. (a)). On November 16, 1992, the trial court sentenced him to prison for eight years. In an unpublished opinion (*People v. Hollis* (July 28, 1994, B072069)), we modified the judgment by reducing Hollis's presentence credit, but otherwise affirmed.[2]

On August 15, 2018, the trial court denied Hollis's pro. per. Proposition 47 petition in that case on the ground robbery is not an offense for which Proposition 47 provides relief.

II. Superior Court Case No. SA030436 (the Receiving Case)

A. *Trial and Sentencing*

A December 9, 1997 information alleged, inter alia, that on or about September 20, 1997, Hollis committed two first degree residential robberies (counts 1 & 2) and first degree residential burglary (count 3). The information also alleged that on or about October 3, 1997, Hollis received stolen property, a collector's issue of Playboy magazine (count 4). The information alleged Hollis had suffered two strikes (§ 667, subds. (b)-(i)), including one

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[2] We take judicial notice of the superior court records and our prior opinions in both the robbery and the receiving cases. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).)

based on the robbery conviction in Superior Court case No. SA010159. In February 1998, the court amended counts 1 and 2 to allege attempted robbery instead of robbery.

On February 13, 1998, a jury convicted Hollis on all four counts. On March 20, 1998, the trial court found true the prior conviction allegations. The court sentenced Hollis to prison for a term of 85 years to life, consisting of consecutive terms of 25 years to life (pursuant to the three strikes law) on counts 1, 2, and 4, plus two five-year section 667, subdivision (a) enhancements. The court stayed sentence on count 3 pursuant to section 654.

B. *The February 2017 Proposition 47 Petition and the Related Appeal*

On February 9, 2017, Hollis, in pro. per., filed a Proposition 47 resentencing petition. The People opposed the petition, asserting Hollis was ineligible for resentencing because Proposition 47 did not apply to the crimes.[3] On February 21, 2017, the trial court denied the petition on that ground.

On March 8, 2017, Hollis appealed (B281467). On June 21, 2017, Hollis, represented by appellate counsel, notified this court that Hollis was abandoning his appeal and requesting dismissal. On June 23, 2017, we granted Hollis's request.

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[3] The People also suggested that Hollis was ineligible for resentencing because the value of the stolen property was $100,000.

C. *The February 2018 Proposition 47 Petition and the Related Appeal*

On February 15, 2018, Hollis, represented by counsel, filed a second Proposition 47 petition, requesting that the court resentence him on count 4. The People opposed the petition, asserting, inter alia, that Hollis's offenses involved the theft of property having a value of about $100,000.

On May 10, 2018, the trial court indicated it would partially grant the petition. Hollis's counsel replied: "[N]ot in part. I've only asked for count 4." The trial court then stated it would treat the petition as a request for reconsideration of the court's February 21, 2017 ruling, but only as to count 4. The People stipulated the court should grant the petition as to count 4 because the loss pertaining to that count did not appear to exceed $950. The People represented that, according to the information, the property stolen was a collector's edition of Playboy magazine worth about $500. The court granted the petition.

The court asked if Hollis's counsel wished to say anything else; he replied no. The court reduced Hollis's conviction on count 4 to a misdemeanor and sentenced him to a term of one year, with credit for 364 days. The abstract of judgment filed on May 17, 2018 reflects Hollis's total prison sentence was 60 years to life, i.e., consecutive terms of 25 years to life on counts 1 and 2, plus two five-year section 667, subdivision (a) enhancements; the court stayed punishment on count 3 pursuant to section 654. Hollis's counsel did not raise a question as to whether the trial court could or should reconsider Hollis's entire sentence during resentencing.

On June 4, 2018, Hollis, in pro. per., filed a notice of appeal from the May 10, 2018 order (B290529).[4] The notice of appeal stated the appeal would focus on sentencing and ineffective assistance of counsel.

On June 20, 2018, we dismissed the appeal. We explained: "On May 10, 2018, the superior court reduced [Hollis's] conviction on count 4 to a misdemeanor under Proposition 47, imposed a sentence on this count of 364 days in county jail and ordered this sentence to be served concurrently to the sentences on counts 1 and 2. Hollis filed a notice on June 4, 2018, purporting to appeal from the order entered on May 10, 2018. [¶] Only an aggrieved party can appeal from a judgment or order. [Citation.] A party aggrieved is one who is injuriously affected by the judgment or order. [Citation.] Hollis was benefited and not injuriously affected by the order of May 10, 2018."

D. *The July 2018 Habeas Corpus Petition*

On July 3, 2018, Hollis, in pro. per., filed a petition for a writ of habeas corpus in the trial court. Hollis complained, inter alia, that the trial court did not reconsider Hollis's entire sentence during the May 10, 2018 resentencing. The petition requested an order requiring such reconsideration and asked the trial court to strike Hollis's prior convictions.

On July 11, 2018, the trial court denied the petition. It explained that Hollis's "writ must fail because he fails to allege that his imprisonment is illegal. [Citation.] The court granted [Hollis's Proposition 47] petition to have the count [4] reduced to a misdemeanor. The court then resentenced defendant as to

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[4] We take judicial notice of the record in B290529.

count [4] to 364 days in county jail. [Hollis] has failed to establish a claim for relief and therefore, his petition is denied."

DISCUSSION

I. The Appeal Must Be Dismissed as to the Robbery Case

On August 31, 2018, Hollis, in pro. per., filed the present appeal. The caption of the notice of appeal bears Superior Court case No. SA030436 (the *receiving* case) as the underlying case. The notice states: "Defendant hereby file[s] a notice of appeal to appeal the court[']s August 15, 2018 order denying defendant's Proposition 47 petition." However, the August 15, 2018 order was issued in the *robbery* case. In any event, on September 13, 2018, we dismissed the appeal because the record contained no August 15, 2018 order.

On October 1, 2018, Hollis, in pro. per., filed a motion for reconsideration, attaching a copy of the August 15, 2018 order. On October 19, 2018, we issued an order stating: "Hollis has now submitted the order entered by the superior court on August 15, 2018 which denied his request for resentencing on the ground that he had been convicted of a violation of . . . section 211 [robbery]. The dismissal of his appeal initiated by the notice filed on August 31, 2018 is vacated, the appeal is reinstated and is assigned to the panel. The request for reconsideration filed on October 1, 2018 is dismissed as moot."[5] At that time, it escaped

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[5] We grant Hollis's April 18, 2019 request that we take judicial notice of our October 19, 2018 order and the abstract of judgment in the receiving case.

our attention that the August 15, 2018 order was issued in the robbery case, while the appeal was taken in the receiving case.

"A 'reviewing court has inherent power, on motion or its own motion, to dismiss an appeal *which it cannot or should not hear and determine*.' [Citation.] An appealed-from judgment or order is presumed correct. [Citation.] Hence, the appellant must make a challenge. In so doing, he must raise claims of reversible error or other defect [citation], and '*present argument and authority on each point made*' [citations]. If he does not, he may, in the court's discretion, be deemed to have abandoned his appeal. [Citation.] In that event, it may order dismissal. [Citation.]" (*In re Sade C.* (1996) 13 Cal.4th 952, 994, italics added; accord, *In re Phoenix H.* (2009) 47 Cal.4th 835, 845 [" ' "Contentions supported neither by argument nor by citation of authority are deemed to be without foundation and to have been abandoned" ' "].)

Hollis's claim of error and argument pertain solely to the resentencing proceedings in the receiving case. To the extent Hollis's appeal is based on the denial of the Proposition 47 petition in the robbery case, we will dismiss the appeal. None of Hollis's arguments compels a contrary conclusion.

II. The Appeal Must Also Be Dismissed as to the Receiving Case

Hollis contends the court abused its discretion in failing to reconsider his entire sentence when resentencing him after granting his Proposition 47 petition as to count 4. Hollis argues that "a Proposition 47 resentencing hearing gives the superior court discretion to resentence the defendant on the entire sentence, even counts or enhancements not impacted by

Proposition 47. This case should be remanded to the superior court to resentence Mr. Hollis on his entire term, particularly in light of Senate Bill [No.] 1393, which ended the statutory prohibition on a court's discretionary ability to strike a . . . section 667, subdivision (a), serious felony enhancement allegation." Hollis requests that we remand this matter to permit the court to resentence him on his entire sentence. We reject this request, because Hollis is appealing from the denial of his petition for a writ of habeas corpus, a nonappealable order.

As the People point out, an order denying a petition for writ of habeas corpus is not appealable.[6] (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.) The petitioner "can obtain review of his claims only by the filing of a new petition in the Court of Appeal." (*Ibid.*) Dismissal of such an appeal is appropriate. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 983, 985-986, 988-989.) Accordingly, insofar as Hollis purports to appeal from the order denying his petition for writ of habeas corpus, we must dismiss the appeal.

III. Senate Bill No. 1393 Does Not Apply

The gravamen of Hollis's resentencing claim is that the trial court should have exercised its discretion to consider whether to strike his section 667, subdivision (a)(1) enhancements in light of the recently-enacted Senate Bill No. 1393, which gave trial courts such discretion. As the People point out, Hollis is not, in any event, entitled to the benefit of

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[6] Although Hollis refers to a "motion for resentencing" in his briefs, it is clear he is referring to his petition for writ of habeas corpus in the receiving case.

Senate Bill No. 1393, because the judgment in the receiving case was final long before its enactment.

Section 1385 provides the trial court with discretion to strike an enhancement in the furtherance of justice. At the time of sentencing, former subdivision (b) of that section provided: "This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667." Senate Bill No. 1393 deleted former subdivision (b). (Stats. 2018, ch. 1013, § 2.)

Senate Bill No. 1393 applies retroactively to defendants in whose cases the judgment is not yet final. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973; see *People v. Brown* (2012) 54 Cal.4th 314, 319-324.) A judgment is final when the time for petitioning the United States Supreme Court for a writ of certiorari has expired. (*People v. Vieira* (2005) 35 Cal.4th 264, 306; *People v. Johnson* (2019) 32 Cal.App.5th 938, 942, petn. den. June 12, 2019; *Garcia*, *supra*, at p. 973.) That time has long since passed with respect to Hollis's 1998 conviction.[7] His "subsequent habeas corpus petitions and motions do not extend the date on which his judgment became final for purposes of Senate Bill No. [1393]." (*Johnson*, *supra*, at p. 942.)

The Supreme Court explained the scope of the trial court's discretion to reconsider a defendant's sentence in *People v. Buycks* (2018) 5 Cal.5th 857. There, the court addressed one of the "issues concerning Proposition 47's effect on felony-based

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[7] "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review." (U.S. Supreme Ct. Rules, rule 13.1.)

enhancements in resentencing proceedings under section 1170.18," specifically, "whether Proposition 47 requires the dismissal of a two-year sentencing enhancement for committing a felony offense while released on bail for an earlier felony offense (§ 12022.1, subd. (b))." (*Id*. at p. 871.) The court "conclude[d] that Proposition 47's mandate that the resentenced or redesignated offense 'be considered a misdemeanor for all purposes' (§ 1170.18, subd. (k)) permits defendants to challenge felony-based section[s] 667.5 and 12022.1 enhancements when the underlying felonies have been subsequently resentenced or redesignated as misdemeanors." (*Ibid*.) The defendant may challenge the enhancement either via a Proposition 47 petition or, in the case of a judgment not yet final as of the date Proposition 47 took effect, via a petition for writ of habeas corpus (see *In re Estrada* (1965) 63 Cal.2d 740). (*Buycks*, *supra*, at pp. 871-872.)

The court held that the "full resentencing rule" applies to Proposition 47 cases, allowing the trial court "to modify *every* aspect of the sentence, and not just the portion subjected to the recall," based on " 'any pertinent circumstances which have arisen since the prior sentence was imposed.' [Citation.]" (*People v. Buycks*, *supra*, 5 Cal.5th at p. 893.) "Therefore, at the time of resentencing of a Proposition 47 eligible felony conviction, the trial court must reevaluate the applicability of any enhancement within the same judgment at that time, *so long as that enhancement was predicated on a felony conviction now reduced to a misdemeanor*. Such an enhancement cannot be imposed because at that point the reduced conviction 'shall be considered a misdemeanor for all purposes.' (§ 1170.18, subd. (k).) Under these limited circumstances, a defendant may also challenge any

prison prior enhancement in that judgment if the underlying felony has been reduced to a misdemeanor under Proposition 47, notwithstanding the finality of that judgment." (*Id*. at pp. 894-895, italics omitted, italics added.)

In other words, when reconsidering the defendant's full sentence on a Proposition 47 petition, the trial court can "reevaluate the applicability" of any enhancement based on a conviction which has been reduced to a misdemeanor. (See *People v. Buycks*, *supra*, 5 Cal.5th at p. 896.) Enhancements not based on the conviction reduced to a misdemeanor remain final. Hollis's section 667, subdivision (a)(1), enhancements *were not* based on his conviction for receiving stolen property, which was reduced to a misdemeanor. Proposition 47 therefore does not entitle Hollis to the retroactive application of Senate Bill No. 1393. (*People v. Johnson*, *supra*, 32 Cal.App.5th at p. 942.)

DISPOSITION

The appeal is dismissed.
NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J. LEIS, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.